IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – II, CHENNAI

CP(IB)/86(CHE)2021

(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of ***M/s. SHARON SOLUTIONS LIMITED***

M/s. UCO BANK,
Having its Corporate Head Office at
No. 10, BTM Sarani,
Kolkata, West Bengal-700 001
And
Having one of its branches being
International Banking Branch at
Third Floor, No.328, Thambu Chetty Street,
Chennai-600 001

... Applicant / Financial Creditor

-Vs-

M/s. SHARON SOLUTIONS LIMITED,
Ground Floor,
Jeena House,
No.520, MKN Road, Alandur,
Chennai-600 016

... Respondent / Corporate Debtor

Order Pronounced on ***18th April, 2023***

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Financial Creditor: Mr. Ravi Rajagopalan, Advocate
For Corporate Debtor: Mr. A.M. Sridharan, Advocate

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

This petition has been filed by **M/s. UCO BANK** (hereinafter referred to as "**Financial Creditor**") on 02.04.2021 under

Section 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016) ("in short **"IBC"**) against **M/s. SHARON SOLUTIONS LIMITED** (hereinafter referred to as "**Corporate Debtor**") to initiate Corporate Insolvency Resolution Process (**"CIRP"**), declare moratorium and appoint Interim Resolution Professional **("IRP").**

2. In Part-I of the application, it is stated that this application has been by the Financial Creditor who is a bank. Affidavit Verifying Application is placed at Page 9-10 and has been signed by one Mr. T. Balu who is the Chief Manager of the Applicant Bank.

3. Part-II of the application states the details of the Corporate Debtor, inter alia, that the Corporate Debtor is a Limited Company. The Company is incorporated under the Companies Act, 1956 on 19.10.2001 with CIN: U51506TN2001PLC047919. The Registered Office of the Corporate Debtor is at Ground Floor, Jeena House, No. 520, M.K.N. Road, Alandur, Chennai-600 016.

4. In Part-III of the application, the Financial Creditor has proposed the name of the IRP. A memo has been filed under S.R. No.1021 dated 02.03.2023. With the memo, written consent of the IRP has been attached. The Financial Creditor has proposed the name of Mr. Ramakrishnan Sadasivan as IRP

with Registration No. IBBI/IPA-001/IP-P00108/2017-18/10215 (AFA valid till 06.11.2023).

5. In Part-IV of application, the Financial Creditor has claimed a sum of Rs.53,19,62,802.12 (Rupees Fifty Three Crores Nineteen Lakhs Sixty Two Thousand Eight Hundred Two and Paise Twelve only) as total 'financial debt' due and payable by the Corporate Debtor as on 31.01.2021 and the date of default is mentioned as 01.11.2020.

6. Part-V of the application describes the particulars of Financial Debt, documents, record, evidence of default and list of documents in order to prove the existence of financial debit which is enumerated as below:

S1.No.	Date	Particulars
1	02.03.2013	Copy of Sanction Letter – **Annexure I (10)**
2	04.03.2013	Copy of Term Loan Agreement – **Annexure I (11)**
3	04.03.2013	Copy of Demand Promissory Note – **Annexure I (12)**
4	04.03.2013	Copy of Letter of continuity – **Annexure I (13)**
5	04.03.2013	Copy of Waiver of presentment – **Annexure I (14)**
6	04.03.2013	Copy of Hypothecation Agreement – **Annexure I (15)**

7	04.03.2013	Copy of Agreement for extension of charge by way of Hypothecation – **Annexure I (16)**
8	04.03.2013	Copy of permanent Omnibus Counter Guarantee – **Annexure I (17)**
9	04.03.2013	Acknowledgement of debt/securities – **Annexure I (18)**
10	28.09.2013	Copy of Interse Agreement – **Annexure I (19)**
11	28.09.2013	Copy of Letter of revival – **Annexure I (20)**
12	28.09.2013	Copy of Working Capital Consortium Agreement – **Annexure I (21)**
13	28.09.2013	Copy of Joint Deed of Hypothecation – Annexure I (22)
	28.09.2013	Copy of supplemental omnibus Counter Guarantee – **Annexure I (23)**
	22.02.2013	Copy of no objection certificate given by Federal Bank Ltd. for Pari Passu charge of securities – **Annexure I (24)**
	28.06.2014	Copy of Agreement for extension of charge by way of Hypothecation over Current Assets to secure Non Fund based facilities – **Annexure I (25)**
	30.06.2014	Copy of Sanction letter – **Annexure I (26)**
	30.06.2014	Copy of Demand Promissory Note – **Annexure I (27)**
	30.06.2014	Copy of Agreement with Borrowers on Rescheduling/Rephasing of Term Loan – **Annexure I (28)**
	30.06.2014	Copy of Agreement with the Guarantors on Rescheduling/Rephasing of Term Loan – **Annexure I (29)**

	30.06.2014	Copy of Hypothecation & Book Debts to Secure Demand Cash – Credit – **Annexure I (30)**
	30.06.2014	Copy of Hypothecation of plant and machinery/Goods as Additional Security – **Annexure I (31)**
	30.06.2014	Copy of Permanent Omnibus Counter Guarantee – **Annexure I (32)**
	30.06.2014	Copy of Declaration cum undertaking – **Annexure I (33)**
	30.06.2014	Copy of Letter of Undertaking – **Annexure I (34)**
	30.06.2014	Copy of Demand Promissory Note – **Annexure I (35)**
	30.06.2014	Copy of Deed of Hypothecation of movable plant and machinery to secure a term loan – **Annexure I (36)**
	30.06.2014	Copy of agreement relating to term loan – **Annexure I (37)**
	14.07.2014	Copy of undertaking given by the Corporate Debtor – **Annexure I (38)**
	16.07.2014	Copy of Declaration – **Annexure I (39)**
	02.01.2015	Copy of recall notice – **Annexure I (40)**
	09.02.2015	Copy of SARFAESI Notice & possession notice – **Annexure I (41)**
	20.02.2020	OTS offer Letter proposed by the Corporate Debtor – **Annexure (42)**
	17.06.2020	Acceptance of OTS proposal by the Petitioner – **Annexure I (43)**
	30.10.2020	Copy of request letter from the Corporate Debtor seeking extension of time – **Annexure I (44)**

	03.11.2020	Letter of Petitioner calling upon the Corporate Debtor to settle the dues immediately – **Annexure I (45)**
	18.03.2021	Settlement offer letter received from the Corporate Debtor – **Annexure I (46)**
	18.03.2021	Reply to the settlement offer letter – **Annexure I (47)**

7. It is stated that the Applicant that the Applicant had granted Respondent credit facilities in the year 2013. The Respondent/Corporate Debtor had executed several documents.

8. The Financial Creditor and the Corporate Debtor had entered into a Working Capital Consortium Agreement along with the other consortium lenders viz., Canara Bank and Federal Bank. The Petitioner has entered into Interse Agreement with Canara Bank and Federal Bank on 28.09.2013.

9. The Petitioner and other lenders, at the request of the Corporate Debtor, in consideration of its commitment to revamp its business and to improve its operations, the Respondent/Corporate Debtor was referred to a Joint Lenders Forum for an efficient restructuring of debt. The Petitioner approved the restructuring package by which financial assistance was restructured as set out in the letter of approval dated 30.06.2014. The limits were renewed subject to various terms and conditions and with total exposure of nearly Rs.30.25 Crores.

10. It is stated that the facilities extended to the Respondent was secured by way of hypothecation of all assets of the company (both movable and immovable - present and future). The necessary charge in this regard was also registered with the ROC.

11. It is stated that the Respondent had deposited the title deeds with an intention to create an equitable mortgage for the facilities extended to the Respondent on 08.01.2016.

12. It is stated that pursuant to the restructuring of various facilities, the Respondent/Corporate Debtor did not operate the credit facilities satisfactorily and committed default. Notices were thereafter issued by the Petitioner on various dates calling upon the Respondent to make payments. The said notices did not elicit any response from the Respondent.

13. The Petitioner therefore classified the account of the Respondent as NPA on 31.12.2014 and issued a SARFAESI notice under Section 13(2) of the SARFAESI Act on 09.02.2015 calling upon the Respondent and its guarantors to pay a sum of Rs.23,93,92,572.72 (Rupees Twenty Three Crores Ninety Three Lakhs Ninety Two Thousand Five Hundred Seventy Two and Paise Seventy Two only) as on 07.02.2015. The said notice did not elicit any response.

14. The Petitioner thereafter filed an application being OA/368/2016 before the Debts Recovery Tribunal-2 ("DRT") for recovery of a sum of Rs.32,55,06,931.20 (Rupees Thirty Two Crores Fifty Five Lakhs Six Thousand Nine Hundred Thirty One and Paise Twenty only) and subsequently, Debt Recovery Certificate being DRC No.133/2018 was issued on 06.03.2018.

15. It is stated that the Corporate Debtor had approached the Applicant/Financial Creditor with a proposal for One Time Settlement ("OTS") vide its letter dated 30.06.2020 and the same was considered by the Applicant vide its communication dated 17.06.2020. The Corporate Debtor acknowledged the debt and the terms and conditions of sanction. However, the Corporate Debtor failed to comply with the terms and conditions and continued to default in making payment.

16. It is stated that the Corporate Debtor once again approached the Applicant with OTS offer vide letter dated 18.03.2021 and the same was rejected by the Applicant vide letter dated 18.03.2021.

17. Considering the above, the Applicant has filed the present application seeking initiation of CIRP against the Corporate Debtor.

18. The Corporate Debtor filed the counter under S.R. No.5329 dated 15.09.2022. The first objection of the Corporate Debtor is regarding the Affidavit verifying the application which was

executed and was not filed along with the application which has since been overcome by the Applicant by filing a rectified application on 26.08.2022. The second objection of the Corporate Debtor is regarding the status of the Corporate Debtor which is stated as per ROC record "under liquidation". It is stated that the Hon'ble High Court of Madras in CP No.14/2014 had appointed the Official Liquidator attached to the High Court of Madras as provisional Liquidator vide its order dated 12.11.2014. The said order was subsequently suspended. However, the Registrar of Companies, Tamil Nadu is of the opinion that the order has been kept in abeyance and not suspended.

19. It is stated by the Applicant that the Financial Creditor M/s. Edelweiss Asset Reconstruction Company had filed an application being Company Application No.IA/575/2018 in CP No.14/2014 seeking permission to initiate CIRP under Section 7 of the Code. The said application was allowed and the Hon'ble High Court of Madras has held that there is no impediment for the Applicant to move the NCLT even without the orders of this Court. As such, the Company is not in liquidation. Copy of the order of the Hon'ble High Court of Madras has been filed under S.R. No. 5474 dated 27.09.2022 which is available on Page 21 and 22. Besides the above, no serious objections have been taken by the Corporate Debtor.

20. Heard both the sides and perused the documents on record. Reference is made to the interim order dated 21.02.2023 which reads as under:

> *"Ld. Counsel for Respondent states that talks are in the advanced stage with the group of investors who are ready to invest in the company and in the process due diligence is expected to be over in a month and half. Ld. Counsel for Respondent seeks adjournment of this matter sometime in mid-April 2023. We are not inclined to grant adjournment as sought for by the Respondent. Ld. Counsel for Respondent gave an undertaking that his clients will be in a position to deposit nearly 50% of the amount by 15th March 2023.*

The said directions were not complied by the Corporate Debtor.

21. Reference is also made to the interim order dated 31.03.2023 where the Counsel for the Respondent admitted that the default amount is of more than Rs.1.00 Crore.

22. There is a clear admission on behalf of the Corporate Debtor that there is default of more than Rs.1.00 Crore. Considering the above, this Tribunal is of the clear view that existence of default has been proved beyond doubt.

23. It is relevant to note the observations of the Hon'ble Supreme Court in the matter of ***Innoventive Industries Limited v. ICICI Bank Limited, (2018) 1 SCC 407*** which are as follows:

> *27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an*

instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. <u>The Code gets triggered the moment default is of rupees one lakh or more (Section 4).</u> The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

30. On the other hand, as we have seen, <u>in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred.</u> It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.

24. As a consequence of the application having been admitted in terms of Section 7 of the Code, moratorium as envisaged under

provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

a. The institution of suits or continuation of pending suits or proceedings against the respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

b. Transferring, encumbering, alienating or disposing of by the respondent any of its assets or any legal right or beneficial interest therein;

c. Any action to foreclose, recover or enforce any security interest created by the respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

25. However during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

26. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced for ready reference:

> (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:
>
> Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

27. The Financial Creditor has proposed the name of **Mr. Ramakrishnan Sadasivan with Registration No. IBBI/IPA-001/IP-P00108/2017-18/10215** (AFA valid till 06.11.2023) as the Interim Resolution Professional ("IRP") who has also filed his consent in Form-2. He is appointed as IRP.

28. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

29. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15, 17, 18 of the IBC, 2016 and file his report within 30 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

30. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

31. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

32. Based on the above terms, the Application stands **admitted** in terms of Section 7(5) of IBC, 2016 and the moratorium shall come in to effect as of this date.

33. A copy of the order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records and to the Interim Resolution Professional above named forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

34. Accordingly, the present petition stands **admitted.**

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)

Suguna